CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 214.

HENRY H. McHARG AND A. A. PELEGAR, RECEIVERS OF VIRGINIA IRON, COAL AND COKE COMPANY ET AL., PETITIONERS,

vs.

WILLIAM H. STAAKE, TRUSTEE OF C. R. BAIRD & COMPANY, BANKRUPTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 26, 1906.
CERTIORARI AND RETURN FILED APRIL 23, 1906.

(19,054.)

(19,684.)

SUPREME COURT OF THE UNITED STATES.

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INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., July 11, 1905.

a Transcript of Record.

United States Circuit Court of Appeals, Fourth Circuit.

RECEIVERS OF VIRGINIA IRON, COAL AND COKE COMPANY, Petitioners, *versus* WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupt. } No. 531.

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia, at Lynchburg.

Petition Filed January 21st, 1904.

Clerk's office, U. S. circuit court of appeals, fourth circuit. Henry T. Meloney, clerk, Richmond.

1 In the United States Circuit Court of Appeals, Fourth Circuit.

Petition for Review.

Filed January 21, 1904.

In re C. R. BAIRD, Trading as C. R. Baird & Co., Bankrupt. In Bankruptcy.
and
In re ROANOKE FURNACE COMPANY, Bankrupt. In Bankruptcy.

To the honorable judges of the United States circuit court of appeals for the fourth circuit:

The petition of your petitioners, The Receivers of the Virginia Iron Coal & Coke Company, a corporation; Huff, Andrew & Moyler Company, a corporation; A. M. Nelson and H. H. Myers, partners trading as Nelson & Myers; Roy B. Smith and A. E. King, partners trading as Smith & King; R. R. Fairfax and E. Lee Bell, partners trading as Fairfax & Bell; Central Manufacturing Company, a corporation; and The Standard Oil Company, a corporation, respectfully submits that they, and each of them, are aggrieved by that part of a decree which was entered on January 14th, 1904, in the above styled proceedings by the district court of the United States for the western district of Virginia, sitting as a court of bankruptcy, whereby it was adjudged, ordered and decreed:

1st. That for reasons stated in a written opinion, the demurrer of the attaching creditors to the petition of Wm. H. Staake, trustee, be, and the same is hereby, overruled.

"2nd. And the attaching creditors having by leave of court filed their answer to said petition, to which the said trustee replies generally, it is further adjudged, ordered and decreed:

"That the rights acquired by the attachment proceedings in the hustings court of the city of Roanoke by the attaching creditors, to-wit: The Virginia Iron, Coal & Coke Company; Huff, Andrews and Moyler Company; Nelson & Myers; Smith & King; Castner, Curran & Bullitt; Fairfax & Bell; Central Manufacturing Company; Standard Oil Company; West End Supply Company, and the First National Bank of Baltimore, be preserved for the benefit of the estate of the said C. R. Baird, bankrupt, and that said petitioner, Wm. H. Staake, trustee of the said estate, be, and he is hereby, subrogated to said rights, and authorized and empowered to enforce the said attachment liens with like force and effect as the said attachment creditors might have done had not the bankruptcy proceedings intervened."

For a proper understanding of the assignments of error you- petitioners will give a brief summary of the facts and pleadings, all of which will more fully appear from a transcript from the record in said cause, which is herewith filed as a part of this petition.

(1.) On the 7th day of December, 1899, Chester R. Baird was the owner of certain properties lying in the city of Roanoke and county of Roanoke, Virginia, among which it is pertinent to mention in this connection only what is known as the West Furnace property.

On the 7th of December, he sold the property aforesaid to the Roanoke Furnace Company, a corporation, which as a part of its purchase price, assumed the payment of the unpaid purchase money agreed to be paid by the said C. R. Baird. While possession was transferred, no deed evidencing this sale was made at the time between the parties, but a contract in writing was executed, which, however, was never recorded in accordance with the laws of the State of Virginia. This contract was therefore void under the laws of the State of Virginia, *quoad* any creditors of C. R. Baird who might choose to avail themselves of the statute and sue out attachments against the property.

(2.) Between October 1st, 1900, and November 1st, 1900, several attachments against the said C. R. Baird, trading as C. R. Baird & Co., were issued from the corporation court of the city of Roanoke, levied on the furnace property aforesaid, and memoranda of *lites pendentes* duly recorded. The following is a summary of such attaching creditors, the dates of the respective levies of their attachments and the amounts of the debts therein claimed, exclusive of interest:

3 (Name of creditor.)	Date of levy.	Am't of debt.
Receivers of Va. Iron, Coal & Coke Co...	Oct. 12, 1900	$24,778.83
Huff, Andrews & Moyler Co.....	Oct. 15, "	934 00
Nelson & Myers.....	Oct. 15, "	600.91
Smith & King.....	Oct. 16,	1,050.00
Castner, Curran & Bullitt.....	Oct. 16, "	843.00
Fairfax & Bell.....	Oct. 16, "	640.00
Central Manufacturing Co.....	Oct. 17, "	773.21
Standard Oil Company..	Oct. 25,	383.14
First National Bank of Baltimore	Oct. 16,	12,000.00

(3.) On November 5th, 1900, the said C. R. Baird executed a deed by which he conveyed to the said Roanoke Furnace Company, a corporation, the property hereinbefore mentioned. This deed was recorded in the proper record offices of Roanoke city on November 7th, 1900, and of Roanoke county on November 8th, 1900.

(4.) On November 24th, 1900, some creditors of Baird filed in the district court of the United States for the eastern district of Pennsylvania a petition to have him adjudged a bankrupt, which was done by the said court on February 18th, 1901, and William H. Staake was appointed trustee of the said bankrupt's estate. In the meantime, on the 26th day of December, 1900, John N. M. Shimer and W. H. Staake were appointed receivers of the bankrupt's estate, and an ancillary suit was instituted in this court on January 2nd, 1901, to aid in accomplishing the purposes of the original suit.

(5.) On December 29th, 1900, some creditors of the Roanoke Furnace Company filed in the district court of the United States for the eastern district of Pennsylvania a petition to have said corporation adjudged a bankrupt, which was done by said court on the 27th day of March, 1901, and on the 27th day of June, 1901, John N. M. Shimer was appointed trustee of the estate of the said bankrupt. In the meantime, the said William H. Staake and John N. M. Shimer were appointed receivers of the bankrupt's estate, and an ancillary suit was instituted in this court on the 2nd day of December, 1901, to aid the said court of original jurisdiction in the administration of the assets of the said bankrupt.

(6.) In the ancillary proceedings aforesaid, injunctions were issued restraining the attaching creditors from proceedings to molest or disturb the said property, or interfering with the custody of said receivers and trustees, decrees were entered in the said cause in the district court of Pennsylvania, allowing the said trustee of C. R. Baird to apply for subrogation to the rights of such attaching creditors.

4 (7.) Decrees were also entered in the two causes aforesaid, directing the sale of the properties of the bankrupts, including the property hereinbefore mentioned, and in pursuance of said decree, and in pursuance of certain agreements hereinafter mentioned, the said properties were sold, and from the proceeds of the sale of the said furnace property was deposited a sum of money suffi-

cient to meet the claims of such attaching creditors, should the validity of such claims be established. Before said decree of sale was entered the parties entered into two agreements as to the jurisdiction of the court and as to the facts, which will be found set forth at large in the transcript of the record herewith filed.

(See agreement No. 1, Record page 21.)

(See agreement No. 2, Record page 23.)

(8.) Thereupon, the said William H. Staake, trustee for C. R. Baird & Co., bankrupt, filed in the bankrupt court aforesaid, his petition, in which he set up the agreed facts set forth in said agreements and claimed that he was entitled under the provisions of the bankrupt law, to be subrogated to the rights of the attaching creditors, and was entitled to have said attachment liens enforced for his benefit, and the proceeds of the efforcement of such liens paid over to him as trustee of the estate of the said C. R. Baird, for distribution according to the bankrupt laws.

The ground upon which the said petitioner claimed that he was entitled to be subrogated to the rights of the attaching creditors aforesaid, was that inasmuch as the deed from C. R. Baird & Co. to the Roanoke Furnace Company was unrecorded at the dates of the issuance of the attachments aforesaid, the property thereby conveyed remained the property of the said C. R. Baird, *quoad* the said attachment creditors; and that the said attachments having been sued out within four months of the adjudication of bankruptcy of the said C. R. Baird & Co., they were null and void under the bankrupt law, unless preserved by the court for the benefit of the said petitioner, William H. Staake, trustee; and hence, that he was entitled to have the said liens preserved and to be subrogated to the rights of the attaching creditors therein.

To this petition, the attaching creditors filed their demurrer, in which the petitioner joined, and on the issue there made the court overruled the demurrer. Thereupon, the attaching creditors answered the said petition, relying upon the agreed facts and denying the invalidity of the said attachments and the right of the said petitioner to be subrogated to the rights of the attaching creditors therein.

Upon the hearing of the case on the said petition, answer and agreed facts, the district court aforesaid entered a decree from which the extract above recited is taken.

(9.) Your petitioners pray the jurisdiction of this court under the provisions of an act of Congress approved July 1st, 1898, and amended and re enacted by an act approved February 5th, 1903, entitled "An act to establish a uniform system of bankruptcy throughout the United States," whereby it is given jurisdiction (see sec. 24B) to superintend and revise in matters of law, the proceedings of the several inferior courts of bankruptcy within its jurisdiction.

Assignment of Errors.

(10.) Your petitioners respectfully represent that said district court erred in matters of law when it entered the portion of the decree hereinbefore set forth and assign the following as the errors committed by the court in entering said decree:

1st. That the court erred in overruling the demurrer of the attaching creditors to the petition of William H. Staake, trustee as aforesaid.

The agreed facts which appeared on the face of the petition show that at the time of the suing out of said attachments the property levied on by said attachments, so far as the creditors represented by William H. Staake, trustee, were concerned, was not the property of C. R. Baird & Co., but the property of the Roanoke Furnace Company. Said attachments became liens on said property by virtue of the registry laws of the State of Virginia, and not by virtue of the fact that the said property was that of C. R. Baird & Co.; and the said petition did not disclose that the creditors represented by William H. Staake, trustee, at the date of the filing of the petition in bankruptcy had any claim to or interest in said property. All that they were entitled to was to have the property then owned by C. R. Baird & Co., subjected to the payment of their debts, and it was error to hold that under these circumstances the provisions of the bankrupt law applied.

2nd. The court erred in holding, as is provided in the second clause of the decree hereinbefore mentioned, that the rights acquired by the attachment proceedings in the hustings court of the city of Roanoke, by the attaching creditors aforesaid, be preserved for the benefit of the estate of the said C. R. Baird, bankrupt, and that
6 said petitioner, William H. Staake, the trustee of said estate, be and he is hereby subrogated to said rights and authorized and empowered to enforce said attachment liens with like force and effect as the said attaching creditors might have done had not the said bankruptcy proceedings intervened.

Inasmuch as the facts were agreed upon by the parties and the petition and answer set up no new facts, the ruling of the court upon the petition, answer and agreed facts was practically the same as the ruling upon the demurrer, and is erroneous for the same reasons as those assigned in regard to the ruling as to said demurrer.

The said C. R. Baird & Co., having on the 6th day of November, 1900, placed of record a deed conveying the said furnace property to the Roanoke Furnace Company, and the same having been done prior to the filing of the petition in bankruptcy, at the date of the filing of the petition in bankruptcy, the said C. R. Baird & Co. had no interest whatsoever in the said property; the creditors of C. R. Baird & Co. who had not theretofore availed themselves of the attachment laws of the State of Virginia had no interest therein, and no longer any right to sue out attachments against said property,

nor subject the same to the payment of their debts, and there passed to the trustee of C. R. Baird and his creditors, no interest or right in the said property and no ground, equitable or legal, on which he could assert the right to be subrogated to the rights of the attaching creditors of C. R. Baird & Co. None of the provisions of the bankrupt law apply to a case of this kind. The bankrupt law had no application to this case, because that only applies to the distribution of the assets of the bankrupt, and has for its object the prevention of a preference in favor of any of the creditors who have a right to subject the assets of the said bankrupt, and there was no preference as to such assets in this case, because the property reached by the attachments was in no sense a part of the assets of the bankrupt.

It is therefore submitted that the court erred in both of its findings hereinbefore mentioned, for the reasons hereinbefore stated and such other reasons as will be hereafter advanced upon the argument of this cause.

In tender consideration whereof, your petitioners pray this honorable court to superintend and revise in all matters of law, said proceedings and findings of said district court, and that it reverse and annul that portion of the decree of January 14th, 1904, hereinbefore set forth, by which your petitioners are aggrieved, and that it enter or cause to be entered such decree or decrees as will
7 secure to your petitioners the rights which they are clearly entitled to under the law.

And your petitioners will, as in duty bound, aver, pray, &c.

RECEIVERS OF THE VIRGINIA IRON, COAL & COKE COMPANY,
By W. G. & E. W. ROBERTSON,
Their Attorneys.
THE HUFF, ANDREWS & MOYLER COMPANY,
NELSON & MYERS,
SMITH & KING,
FAIRFAX & BELL,
CENTRAL MANUFACTURING COMPANY,
THE STANDARD OIL COMPANY,
By SCOTT & STAPLES, Their Attorneys.

WM. GORDON ROBERTSON,
EDWARD W. ROBERTSON,
SCOTT & STAPLES,
Solicitors for the Petitioners.

Memorandum.

A certified copy of the above petition, with notice to respondent's attorney to answer, demur or move to dismiss said petition within

fifteen days, was mailed to S. Griffin, Esq., January 21, 1904, as required by rule 36, bankruptcy.

HENRY T. MELONEY, Clerk.

Demurrer to Petition.

Filed Feb. 8, 1904.

In the United States Circuit Court of Appeals, Fourth Circuit.

In re C. R. BAIRD, Trading as C. R. Baird & Co., Bankrupt. In Bankruptcy.

and

In re ROANOKE FURNACE COMPANY, Bankrupt. In Bankruptcy.

The demurrer of William H. Staake, trustee of C. R. Baird, trading as C. R. Baird & Company, bankrupt, to the petition of
8 the Receivers of the Virginia Iron, Coal and Coke Company *et als.*, filed on the 21st day of January, 1904.

This defendant by protestation, not confessing or acknowledging any or all of the matters and things in the said petition contained, to be true in such manner and form as the same are therein set forth and alleged, doth *doth* demur to the said petition; and for causes to demur- showeth:

That said petition is not sufficient in law; it appearing by the plaintiffs' own showing by the said petition that they are not entitled to the relief prayed for by the petition against this defendant; wherefore, and for divers other good causes of demurrer appearing on the said petition, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any answer to the said petition, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

S. GRIFFIN,

Solicitor and of Counsel for the Defendant, William H. Staake, Tr. of C. R. Baird, Trading as C. R. Baird & Company.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

S. GRIFFIN,

Of Counsel for Defendant, Wm. H. Staake, Tr. of C. R. Baird, Trading as C. R. Baird & Company.

The affidavit that the above demurrer is not interposed for delay is hereby waived.

WM. GORDON ROBERTSON,

Of Counsel for Petitioners.

Answer.

Filed Feb. 8, 1904.

In the United States Circuit Court of Appeals, Fourth Circuit.

In re C. R. BAIRD, Trading as C. R. Baird & Co., Bankrupt. In Bankruptcy.
and
In re ROANOKE FURNACE COMPANY, Bankrupt. In Bankruptcy.

The answer of William H. Staake, trustee of C. R. Baird, trading as C. R. Baird & Company, to the petition of the receivers of
9 the Virginia Iron, Coal and Coke Company *et als.*, respectfully shows to this court:

1. That this respondent has lately exhibited and filed in the district court of the United States for the western district of Virginia, his petition against the said Virginia Iron, Coal and Coke Company *et als.*, upon which petition and the proceedings thereunder the decree complained of in the petition for revision was had.

Respondent further says that all and singular the allegations in said petition of respondent as therein made are true, and that respondent refers to the same, and makes the same and the allegations thereof a part of this answer, the same as if fully set out and incorporated herein.

2. Respondent further says, that the facts of this case are all matters of record, and that so far as said petition sets out the facts as contained in the record, he admits them to be true, but so far as there is any variance, respondent denies that the facts set out in said petition for revision are true.

And now having fully answered, he prays to be hence dismissed.

WM. H. STAAKE,
Trustee of C. R. Baird, Trading as C. R. Baird & Co.
By COUNSEL.

S. AND U. GRIFFIN, p. d.

Transcript of Record.

Filed Feb. 22, 1904.

UNITED STATES OF AMERICA, Western District of Virginia, } *To wit:*

Pleas in the district court of the United States for the western district of Virginia, before the Honorable Henry C. McDowell, judge of the district court of the United States for the western district of Virginia, on Thursday, the 14th day of January, anno Domini 1904, and in the 128th year of the Independence of the United States.

In re C. R. BAIRD, Trading as C. R. Baird & Co., Bankrupt.

In re ROANOKE FURNACE COMPANY, Bankrupt.

In Bankruptcy.

Be it remembered, that heretofore, to wit, on the 27th day of February, 1903, in the clerk's office of the said district court of
10 the United States for the western district of Virginia, at Lynchburg, came Wm. H. Staake, trustee of the estate of Chester R. Baird, trading as C. R. Baird & Company, bankrupt, by counsel, and filed his petition, which petition is in the words and figures following, to-wit:

Petition of William H. Staake, Trustee.

Filed Feb'y 27th, 1903.

In the District Court of the United States for the Western District of Virginia.

In the Matter of CHESTER R. BAIRD, Trading as C. R. Baird & Company, Bankrupt. In Bankruptcy.

In the Matter of ROANOKE FURNACE COMPANY, Bankrupt. In Bankruptcy.

To the Honorable Henry Clay McDowell, judge of the said court:

The petition of William H. Staake, trustee of the estate of Chester R. Baird, trading as C. R. Baird & Company, bankrupt, respectfully represents:

1. That your petitioner is the trustee of the estate of Chester R. Baird, trading as C. R. Baird & Company, bankrupt, having been appointed and qualified as such in proceedings pending in the dis-

trict court of the United States for the eastern district of Pennsylvania, whereof this honorable court has assumed ancillary jurisdiction.

2. That your petitioner has filed against the estate of Roanoke Furnace Company, in proceedings likewise pending in the district court of the United States for the eastern district of Pennsylvania, whereof this honorable court has likewise assumed ancillary jurisdiction, his claim in the sum of $158,757.55. This amount includes $85,000 due by Chester R. Baird to Robert E. Tod in part payment for the Roanoke or West End Furnace property; the Roanoke Furnace Company assumed payment of this as part of the consideration of the conveyance to it by Chester R. Baird of the said premises, but failed to carry out its agreement, and Baird was obliged to pay the same to Tod.

3. That the said premises were attached by sundry creditors of said Baird, as and for his property, by reason of the non-recorda-
11 tion of the deed from said Baird to the Roanoke Furnace Company. The facts respecting the conveyance of the said premises, the said attachments, the insolvency of Baird and of Roanoke Furnace Company, and the like, are set forth at length in the agreed statements of fact heretofore attached, respectively marked Exhibits A and B, and made part hereof.

4. That your petitioner, by decree of the district court of the United States for the eastern district of Pennsylvania, was ordered to have himself subrogated to the rights of the aforesaid attaching creditors, said decree being as follows:

"And now, to-wit, this 3rd day of May, A. D. 1901, upon consideration of the foregoing petition and on motion of John Dickey, Jr., Hazard Dickson and Samuel W. Cooper, Esqs., attorneys for William H. Staake, trustee of the estate of Chester R. Baird, trading as C. R. Baird & Company, it is ordered, adjudged and decreed that William H. Staake, trustee as aforesaid, be and he hereby is authorized and directed to proceed in an appropriated manner to have himself subrogated to the rights of the holders of the liens of attaching creditors of Chester R. Baird, trading as C. R. Baird & Company, who have levied by foreign attachment and otherwise upon the premises contracted to be conveyed to the said Baird by Robert E. Tod, and empowered, when thus subrogated, to enforce the same in his name as trustee with like force and effect as the holders of the said liens might have done had not bankruptcy proceedings intervened; but the said liens shall in that event be subordinated to the receiver's certificates authorized by the order of this court on the 30th day of March, 1901, as amended by the further order made on the 19th day of April, 1901, *In re* Roanoke Furnace Company, bankrupt."

The receiver's certificates mentioned in said decree have now all been discharged.

Your petitioner therefore shows that under the laws of Virginia, the rights of the aforesaid attaching creditors are superior to those

of Roanoke Furnace Company, bankrupt, and that *quoad* them the property attached is the property of Chester R. Baird, now bankrupt; but that by reason of the insolvency of Chester R. Baird at the time of the levying of the said attachments, these attachments (having been levied within four months of the filing of the petition praying that he be adjudged a bankrupt) are to be deemed null and void under the provisions of the bankruptcy act of 1898, unless the court shall order that they be preserved for the benefit of his estate.

12 Your petitioner further shows that it would be to the benefit of the estate whereof he is trustee thus to preserve the said attachments as already directed by the district court of the United States for the eastern district of Pennsylvania, the court of primary jurisdiction.

Your petitioner therefore prays that your honorable court will assume jurisdiction of the matter, and that the attachments aforesaid be decreed null and void as regards the present plaintiffs, but that they be preserved for the benefit of your petitioner.

Your petitioner further prays that if this honorable court declines to assume jurisdiction and remits the matter to the courts out of which the said attachments issued, this honorable court will nevertheless order these attachments preserved for the benefit of the estate whereof your petitioner is trustee, and direct your petitioner to proceed to have himself subrogated to the rights of the holders of the said attachments, and empower him to perfect and enforce the same in his name as trustee.

And your petitioner will ever pray.

WILLIAM H. STAAKE,
Trustee Chester R. Baird, Trading as
C. R. Baird & Co., Bankrupt.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

William H. Staake, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing petition are just and true, as he verily believes.

WILLIAM H. STAAKE.

Sworn and subscribed before me this 25th day of February, A. D. 1903.

WM. A. RAFFERTY,
[SEAL OF NOTARY PUBLIC.] Notary Public.

Commission expires January 26th, 1907.

Amendment to Petition.

To the Honorable Henry Clay McDowell, judge of the circuit court of the United States for the western district of Virginia:

The petition of Wm. H. Staake, trustee of the estate of Chester R. Baird, trading as "C. R. Baird & Company," bankrupt, respectfully represents:

1. That your petitioner desires to add to his petition, which
13 was verified on the 25th day of February, 1903, the following averment, which was omitted therefrom though inadvertence, to-wit:

(3–*a*.) That the attachments aforesaid covered likewise certain other premises, being a portion of the premises conveyed to Chester R. Baird by Rob't E. Tod; this portion of the premises the said Baird, by written contract dated the 7th day of December, 1899, covenanted and agreed to convey to the Virginia Rolling Mill Company, but the said contract remained executory, possession of the premises was not delivered, nor was a deed executed or delivered, and the said contract was, by mutual agreement, abrogated and rescinded on the — day of August, A. D., 1902.

And your petitioner will ever pray, etc.

WM. H. STAAKE, Trustee,
By HAZARD DICKSON.

UNITED STATES OF AMERICA,
Western District of Virginia, } *To-wit:*

Hazard Dickson, being duly sworn according to law, doth depose and say that he is attorney for Wm. H. Staake, petitioner herein, who is not now within the western district of Virginia; that this deponent is fully informed as to the foregoing facts, and the same are just and true, as he verily believes.

Given under my hand this 26th day of February, 1903.

HAZARD DICKSON.

Subscribed and sworn to before me this 26th day of February, A. D., 1903.

G. A. WINGFIELD,
Commissioner in Chancery.

EXHIBIT "A."

(Agreement No. 1.)

Whereas certain attachments issuing out of suits pending in the hustings court of the city of Roanoke, Virginia, have been levied upon certain property as and for the property of C. R. Baird and others, which property John N. M. Shimer, trustee of the estate of the Roanoke Furnace Company, bankrupt, and William H. Staake, trustee of the said Chester R. Baird, trading as C. R. Baird & Co.,

bankrupt, are about to sell under an order of the district court of the United States for the eastern district of Pennsylvania; and

Whereas it is claimed by the said trustees that jurisdiction of the claims of the said attaching creditors is in the Federal courts, and not in the courts of Virginia, and this question being undetermined, the said trustees are willing that a fund sufficient to meet
14 these claims shall be deposited in the Philadelphia national bank, or in the Fidelity Trust Company of Philadelphia, payable upon the order of the court, which shall maintain its jurisdiction over said claims, and distribute the fund to the parties entitled thereto;

Now, therefore, it is hereby agreed by and between the said trustees and the said attaching creditors, that the said trustees will apply at once — the judge of the said district court of the United States in and for the eastern district of Pennsylvania for an order permitting and directing them to deposit a fund sufficient to pay said attachment claims, and that said fund shall be payable and distributed upon the order of the said courts of the State of Virginia, should the said courts exercise jurisdiction, and make order of distribution as aforesaid, and upon the order of the Federal court, if the said court shall exercise jurisdiction in the matter and make order of distribution as aforesaid, certificate of deposit shall be given by the depositary payable as aforesaid, and copies of the same be deposited in the State and Federal courts aforesaid;

And the said attaching creditors hereby further agree that in consideration of the foregoing, provided said order is entered, they will make no objection to the confirmation of the sale aforesaid, for a price sufficient to admit of a deposit of the sum aforesaid.

Nothing in this agreement shall operate to prejudice the right of the attachment creditors to insist that the trustee of the estate of C. R. Baird & Co., is not entitled to the benefit of said attachments, and that the corporation court of the city of Roanoke, Virginia, has jurisdiction to determine such question; the object being that such questions are to be determined by the court of proper jurisdiction, unaffected by this agreement.

Witness the following signatures the day and year first above written.

WILLIAM H. STAAKE,
Trustee C. R. Baird & Co.
JOHN N. M. SHIMER,
Trustee Roanoke Furnace Co.
WATTS, ROBERTSON & ROBERTSON,
For Receivers Virginia Iron, Coal & Coke Co.
SCOTT & STAPLES,
Attorneys for Huff, Andrews & Moyler Co.,
Smith & King, Nelson & Myers, Central Mfg. Co.
A. B. COLEMAN,
Attorney for the Standard Oil Co., Fairfax & Bell.

July 31, 1902.

15 EXHIBIT "B."

(Agreement No. 2.)

In the Matters of C. R. BAIRD & Co., Bankrupt,
and
THE ROANOKE FURNACE COMPANY, Bankrupt.

The following is agreed between the undersigned, the trustees of the estate of C. R. Baird, trading as C. R. Baird & Co., bankrupt, and the Roanoke Furnace Co., bankrupt, and certain attachment creditors whose names are mentioned in the schedule hereto attached, marked "Exhibit No. 1."

(1.) The question of what court, State or Federal, has prior jurisdiction to determine who is entitled to the benefit of said attachment liens, and what court shall enforce them, is submitted to the district court of the United States for the western district of Virginia, in the ancillary proceedings in the matter of C. R. Baird & Co., bankrupt, and the Roanoke Furnace Company, bankrupt. Should the Federal court, which shall determine such question, establish its own prior jurisdiction, then the question of who is entitled to the benefit of such attachment liens is to be decided by it on the facts herein agreed, and if it shall establish the prior jurisdiction of such State court, then the latter court shall determine who is entitled to the benefit of such attachments, upon said facts agreed; but this agreement shall not prejudice the rights of any party hereto to take any appeal from the decision of any court on any issue raised, jurisdictional or otherwise, which he would have the right to take if this agreement had not been made.

Agreed Facts.

(1.) That a petition praying that Chester R. Baird, trading as C. R. Baird & Company, be adjudged an involuntary bankrupt was filed in the district court of the United States for the eastern district of Pennsylvania, on the 24th day of December, A. D. 1900, and a further petition was filed in said court on the 26th day of December, A. D., 1900, in accordance with the prayer of which John N. M. Shimer and William H. Staake were appointed receivers of the estate of the said Chester R. Baird, trading as C. R. Baird & Co., and such receivers duly qualified and entered upon the duties of their office.

(2.) That a petition was filed in the district court of the
16 United States for the western district of Virginia, on the 2nd day of January, 1901, praying among other things that said court assume ancillary jurisdiction of the cause and appoint receivers of the estate of the said alleged bankrupt, found within the territorial jurisdiction of this court, and in pursuance thereof the

said John N. M. Shimer and William H. Staake were appointed receivers of said estate, who thereupon qualified and entered upon the duties of their office, and assumed possession of said estate.

(3.) That Chester R. Baird, trading as C. R. Baird & Co., was on February 18th, 1901, by the district court of the United States for the eastern district of Pennsylvania duly adjudged a bankrupt and on the 29th day of March, 1901, William H. Staake was appointed trustee of the -tate. He qualified and entered upon the duties of his office and took possession of the estate of the bankrupt, as set out in the inventory and appraisement filed in the record in said cause.

(4.) That said Chester R. Baird by written contract made and entered into the 7th day of December, 1899, but was not recorded, sold to the Roanoke Furnace Company a certain furnace property lying partly in the city of Roanoke and partly in the county of Roanoke, Virginia, commonly known as the "West End Furnace" and other property, and by deed of conveyance dated the 5th day of November, 1900, and recorded in the clerk's office of the corporation court of the city of Roanoke, on the 7th day of November, 1900, in Deed Book 125, page 149, and in the clerk's office of the county court for Roanoke county on the 8th day of November, 1900, in Deed Book 22, page 402, conveyed the said land or the West End Furnace property, to the said Roanoke Furnace Company for the consideration therein named, copies of which deed and contract are hereto attached, marked "Exhibit No. 2." That certain other conveyances were made by the said C. R. Baird to the said Roanoke Furnace Company, a statement, or copies of which, are filed herewith, marked "Exhibit No. 3."

(5.) That a petition praying that the Roanoke Furnace Company be adjudged an involuntary bankrupt was filed in the district court of the United States for the eastern district of Pennsylvania, on December 29th, 1900, and the said court in said proceedings, in accordance with the prayer of a petition filed therein, appointed William H. Staake and John N. M. Shimer receivers of the estate of the said Roanoke Furnace Company, who duly qualified as such and entered upon the duties of their office.

17 (6.) That a petition was filed in the district court of the United States for the western district of Virginia, on the 2nd day of January, 1901, praying, among other things, that the court assume ancillary jurisdiction of the matter of the Roanoke Furnace Company, alleged bankrupt, and appoint receivers of the estate of the said alleged bankrupt found within the territorial jurisdiction of this court; and in pursuance thereof the said William H. Staake and John N. M. Shimer were appointed receivers of the said estate, and qualified as such and entered upon the duties of their office, and assumed possession of the said estate.

(7.) That pursuant to the prayer of the petition filed the said 29th day of December, 1900, the said Roanoke Furnace Company was adjudged a bankrupt on the 27th day of March, A. D., 1901, and subsequently, to-wit: on the 27th of June, 1901 the said John N. M.

Shimer was appointed trustee of its estate. The said John N. M. Sheimer has duly qualified as such, and entered upon the duties of his office; and is now in full custody and possession of the estate of the said bankrupt found within the territorial jurisdiction of the district court of the United States for the western district of Virginia.

(8.) That within the period of four months next before the 24th day of December, 1900, sundry attachments were levied upon the estate of the said Chester R. Baird trading as C. R. Baird & Co., whereof a schedule is hereto attached, showing the name of the attaching creditor, the amount of the debt for which such attachments were issued and levied, the dates of such levies, and the property on which they were levied; which schedule is made a part of this agreement, and is marked "Exhibit No. 4." No bond was given by any attaching creditor.

(9.) That inasmuch as the contract and deeds from C. R. Baird & Co. to the Roanoke Furnace Company had not been recorded at the time of the levying of such attachments, the property therein conveyed is to be deemed and taken under the laws of the State of Virginia as the property of the said C. R. Baird, *quoad* the said attachment creditors of the said C. R. Baird & Co., in the said schedule mentioned, and *quoad* the liens and debts therein referred to, and no further, and that said attachments were valid liens on the property levied on as of the dates of said levies respectively, subject to corrections, if any, as to the amounts of said debts.

18 (10.) That the said Baird, trading as aforesaid, was insolvent at the time of the suing out and levying of the said attachments. That *lites pendentes* were filed against the property of C. R. Baird, trading as C. R. Baird & Co., in the attachment proceedings aforesaid, and at the dates and on the property mentioned in the schedule hereunto attached, marked "Exhibit No. 5," as provided by the Virginia statute.

(11.) That any part of the records in the proceedings of the matter of the Roanoke Furnace Co., bankrupt, and C. R. Baird, bankrupt, or in the attachment or proceedings aforesaid, may be considered by the court, State or Federal, which may pass upon any issues herein referred to, but this agreement shall not operate to waive any question of jurisdiction involved in any of the cases aforesaid. Any objection to the certificates of copies of papers on file is waived.

Roanoke, July 31, 1902.

SCOTT & STAPLES,
Att'ys for Nelson & Myers, Central Mfg. Co., Huff, Andrews & Moyler Co., Smith & King.

A. B. COLEMAN,
Att'ys for the Standard Oil Co., Fairfax & Bell.

WILLIAM H. STAAKE,
Trustee C. R. Baird & Co., Bankrupt.

J. N. M. SHIMER,
Trustee for Roanoke Furnace Co., Bankrupt.

WATTS, ROBERTSON & ROBERTSON,
For Rec'v'rs Va. I. C. & C. Co., Castner, Curran & Bullitt.

EXHIBIT No. 1. Filed with Petition.

Virginia Iron, Coal & Coke Company,
Nelson & Myers,
Huff, Andrews & Moyler Company,
Central Manufacturing Company,
Smith & King,
Standard Oil Company,
Fairfax & Bell,
Castner, Curran & Bullitt.

19 Answer of Attachment Creditors to Petition of William H. Staake, Trustee.

In the District Court of the United States for the Western District of Virginia.

Filed November 27, 1903.

In the Matter of C. R. BAIRD, Trading as C. R. Baird & Co. (Bankrupt).

In the Matter of ROANOKE FURNACE COMPANY, a Corporation (Bankrupt).

In Bankruptcy.

Answer of the First National Bank of Baltimore, the Virginia Iron, Coal & Coke Co., a corporation; the Huff, Andrews & Moyler Company, a corporation; A. M. Nelson and H. H. Myers, late partners trading as Nelson & Myers; Roy B. Smith and A. E. King, partners trading as Smith & King; —— Castner, —— Curran, and —— Bullitt, partners trading as Castner, Curran & Bullitt; the Central Manufacturing Company, a corporation; R. R. Fairfax and C. B. Bell, late partners as Fairfax & Bell, and the Standard Oil Company, a corporation, to the petition of William H. Staake, trustee of C. R. Baird, trading as C. R. Baird & Company.

These respondents, The Virginia Iron, Coal & Coke Company, a corporation; The Huff, Andrews & Moyler Company, a corporation; Nelson & Myers; Smith & King; Castner, Curran & Bullitt; The Central Manufacturing Company, a corporation; Fairfax & Bell; and The Standard Oil Company; not waiving their demurrer to the said petition, but insisting on the same, for answer thereto, or to so much thereof as they are advised it is material they should answer, answering say:

(1.) They rely on the agreed facts evidenced in a-reement No. 1 and agreement No. 2 and the one with the First National Bank of

Baltimore, filed in the record in this cause, and the exhibits therein referred to, and in so far as the allegations of the said petition are in accordance with said agreements and exhibits, they admit them to be true, and in so far as they are in conflict with said agreed facts and agreements and exhibits, or are outside thereof, they deny that they are true, and call for proof of such allegations.

(2.) They deny that the said William H. Staake, trustee, is
20 entitled to be subrogated to the rights of said respondents, or that he or the general creditors of C. R. Baird have any interest therein, or any rights in the premises, or that the property of C. R. Baird conveyed by him to the Roanoke Furnace Company, under the deed mentioned in said agreed facts, prior to the bankruptcy of the said C. R. Baird and levied on in the said attachment proceedings therein mentioned, come within the operation of the bankrupt law, or is in any way affected thereby, and the same is true of the fund substituted in the place of the said property.

(3.) They waive any question of the prior jurisdiction of the hustings court of the city of Roanoke to adjudicate the question and issues herein involved, and consent that the same may be adjudicated by this court; but always with the reservation that the merits of the said issues are not to be affected, or respondents' property rights impaired by this waiver.

And now having fully answered they pray this honorable court may hold that the said trustee and creditors have no rights to, or interest in, said attachments, or the property so attached, or the fund derived thereby; but that the said fund may be paid to these respondents, according to the amounts due to them respectively.

And they will ever pray, etc.

THE VIRGINIA IRON, COAL & COKE COMPANY,
THE HUFF, ANDREWS & MOYLER COMPANY,
NELSON & MYERS,
SMITH & KING,
CASTNER, CURRAN & BULLITT,
CENTRAL MANUFACTURING COMPANY,
FAIRFAX & BELL,
THE STANDARD OIL COMPANY, AND
THE FIRST NATIONAL BANK OF BALTIMORE,
By COUNSEL.

Affidavit waived by consent of counsel.

HENRY C. McDOWELL,
District Judge.

21 Opinion of the Court.

Filed Jan'y 14th, 1904.

United States District Court, Western District of Virginia.

In re C. R. BAIRD, Bankrupt,
and
In re ROANOKE FURNACE COMPANY, Bankrupt.

C. R. Baird, who did business under the name of C. R. Baird & Co., was the owner of certain real estate situated in this district, consisting of (1) the West End Furnace property; (2) certain mines, houses, rights of way &c., and (3) a rolling mill.

On December 7th, 1899, Baird, by written contract, sold the furnace property to the Roanoke Furnace Company, in consideration of the issue to Baird of certain shares of the vendee's capital stock and the assumption by the vendee of a purchase money debt owing on the furnace by Baird to R. E. Tod. This contract was never recorded. On November 5, 1900, Baird executed and delivered to the Roanoke Furnace Company a deed in pursuance of the above mentioned contract, conveying the furnace property, which deed was forthwith recorded.

On October 13, 1900, Baird conveyed to the Roanoke Furnace Company the mines, houses, &c., but these deeds were not recorded up to the time that the petition in bankruptcy against Baird, hereafter to be mentioned, was filed.

The title to the rolling mill remained in Baird.

Between October 12th and 31st, 1900, at which time Baird was insolvent, some of Baird's creditors sued out from the corporation court of the city of Roanoke, Virginia, attachments which were levied on all three of the above mentioned properties.

On December 24, 1900, other of Baird's creditors filed in the district court for the eastern district of Pennsylvania a petition in bankruptcy against him. In due course that court adjudicated Baird a bankrupt. Early in the course of this proceeding, ancillary jurisdiction was taken of the cause by this court.

On December 29, 1900, an involuntary petition against the Roanoke Furnace Company was filed in the said Pennsylvania court, followed by an adjudication. Ancillary jurisdiction of this cause was also taken by this court.

All of the above mentioned properties have been sold by order of court and the proceeds are deposited to the joint credit of
22 Staake, trustee of Baird's estate, and Shimer trustee of the furnace company estate, to await the determination of the questions hereinafter discussed.

By the registry statutes of this State unrecorded contracts of sale

and conveyances of real estate are void as to, at least, lien creditors.

The questions here are presented by a petition filed by Staake, trustee, praying that the attachments above mentioned be declared void as regards the creditors who sued them out, but preserved for the benefit of Baird's estate; by a demurrer to this petition filed by the attaching creditors; by an answer to the petition filed by Shimer, trustee of the furnace company estate, praying that if the benefit of the attachments be given to the trustee of Baird's estate he be required to correspond-ly abate his claim against the furnace company estate; and by a supplemental answer by Shimer, trustee.

At the hearing all objections to the jurisdiction of this court were withdrawn, and jurisdiction is taken by express consent of all parties.

The demurrer to the petition is intended to raise merely the question as to whether the trustee of Baird's estate or the attaching creditors shall have the benefit of the attachments.

By 67*f* of the bankrupt law, all attachments obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt; and the property affected by the attachment shall be deemed wholly discharged and released from the same, and shall pass to the trustee as part of the estate of the bankrupt, unless the court shall on due notice order that the right under such attachment shall be preserved for the benefit of the estate. In the case at bar the attachments were obtained through legal proceedings against Baird, within four months of the filing of the petition against him, and he was insolvent at the time. The language of this section so exactly fits the case we have here that some cogent reason must be found before we can properly hold that it does not apply.

Counsel for the attaching creditors, in an unusually excellent argument, take the position that the case at bar is not within the intent of the bankrupt law. They argue that it is so unjust and inequitable to take from the attaching creditors the fruits of their diligence and give them to all the creditors pro rata, that Congress could not have intended the act to apply in a case such as we have here. Nevertheless, counsel for these creditors necessarily
23 admit that if Baird had never conveyed the furnace, or if his grantee had never recorded the deed, or if Baird had made a fraudulent conveyance, the act plainly takes from the attaching creditors the fruits of this diligence and gives them all the creditors pro rata. The argument that the law is unjust or inequitable is certainly as strong in any of the three supposed cases as in the case at bar. While the State law gives to diligent creditors who attach a priority of payment, a preference, over those who do not attach, it is beyond dispute that the intent of the bankrupt law (except as to rights gained more than four months before the filing of the petition in bankruptcy) is just the reverse. The intent of the

latter, except as aforesaid, is to prorate all available assets and to prevent any priority of payment being obtained by any creditor within the four months, whether by consent of the debtor or by the diligence of the creditor. Such being the intent of the law, it seems to me that the argument based on the supposed injustice of the act as applied to case at bar is not of weight. Such being the intent of the law, it would be surprising if Congress had omitted to provide for the (not) uncommon state of facts which we have here. And, as above remarked, the language of 67*f* seems entirely adapted to the case we have here, as well as to other possible cases. In cases where the title to the attached property remains in the bankrupt, the liens of attaching creditors are simply annulled and the proceeds of the property are divided pro rata among all the creditors. In cases where the bankrupt has made a fraudulent conveyance, this deed is by proper proceedings set aside, the attachments are annulled and the proceeds of the property are prorated among all the creditors. In cases where the bankrupt makes a valid conveyance, or where his fraudulent vendee makes a valid conveyance, the purpose of the law is worked out by preserving and enforcing the liens of the attaching creditors for the pro rata benefit of all the creditors.

It is further argued that the case at bar is not within the intent of the act, because the right here contended for by the trustee is not mentioned in section 70*a* of the act. This argument does not seem to me to be of force. Section 70*a* is an enumeration of those properties the title to which passes to the trustee by operation of law. The right here asked for by the trustee can be given him only by order of court. It would have been inconsistent, even absurd, to have provided in 70*a* that the rights of attaching creditors, in a case such as we have here, shall vest in the trustee by operation of law, when it had been provided in 67*f* that such rights should be vested in the trustee by order of court.

24 It was further argued that the power to preserve and enforce liens for the benefit of all the creditors is given only as to liens that may be annulled under 67*f*; that only liens which give a preference are thus to be annulled, and that the liens here do not give a preference. While the argument is ingenious, I cannot assent to its soundness. If the attaching creditors are allowed to have the exclusive benefit of their liens, I do not see why they are not in effect allowed a preference. In such event they will be paid in full, while the other creditors will receive only a small proportion of their claims. Again, 67*f* is not confined to liens that create a preference. Its language expressly embraces all liens obtained as were the liens in the case at bar.

Considerable effort was expended in argument on the proposition that an unrecorded contract of sale, or deed, is made void by the Virginia statutes only as to lien creditors, and that, even if there were doubt about this as a legal proposition, clause 9 of the agreed facts in effect so states. I see no necessity of discussing these questions. If it were admitted that the right contended for by the trus-

tee had to be found in 70*a* before such right could be given him, this point might be of considerable interest. But, as above stated, this right could not properly have been mentioned in 70*a*. The power of the court, and, indeed, its duty, to take away from the attaching creditors the benefit of their liens and give it to the trustee is found specifically in 67*f*. To thus construe this section is in line with the undoubted policy of the act; and its language is so sweeping and general that I am constrained to believe that had Congress not intended such cases as we have here to fall within its purview, some specific provision would have been made excepting such cases.

So far as this branch of the case is concerned, I am of opinion that an order should be made subrogating the trustee to the rights of the attaching creditors in the fund derived from the sale of the furnace property.

By request of counsel for the attaching creditors, and as the questions have not been argued, I do not now express an opinion on the questions presented by the answer and supplemental answer of Shimer, trustee.

Since the foregoing opinion was sent to counsel a petition has been filed by counsel for certain of the attaching creditors, praying that an allowance be made to counsel out of the fund now under the control of the court. Staake, trustee, demurred to the petition.

25 The fund in question would not exist but for the services of counsel. Had valid attachments not been levied, the property would have passed to the trustee of the Roanoke Furnace Company. Under such circumstances, equity treats the fund as charged with the claims of counsel for a reasonable allowance. I do not find any provision of the bankrupt act which deals with this question, nor any provision which seems to me to debar such an allowance. The fund should, I think, be treated as having come under the control of this court subject to this charge. In making such allowance the court is not distributing the bankrupt's estate; but is directing the payment of a prior lien or charge on the fund, and only the balance left after such payment can properly be treated as the estate of the bankrupt.

Having announced to counsel that I would overrule the demurrer, an answer to the petition has been filed by the trustee.

The authorities cited in the answer do not seem to me to hold that a reasonable allowance would be improper under the circumstances of this case. In support of the reasonableness of the amounts prayed for in the petition, sundry depositions of members of the bar have been taken. On a question of fact the court is bound by the weight of the testimony. But in this case the question of fact is as to what the services of counsel were, and as to this there is no dispute. The question as to what is a reasonable allowance for such services is one on which the opinions of members of the bar can properly have only advisory force. It is the duty of the court to decide what sum is reasonable, and this duty cannot be shifted to

expert witnesses. Out of deference to the opinions of the members of the bar who have testified, I make the allowances somewhat larger than I should have done had the question been submitted without these depositions; but I cannot allow the sums prayed for. It appears that the minimum fee allowed by the rules of the Roanoke Bar Association is 10 % on the first $1,000 and 5 % on the balance. This it is said is the scale for collections made without suit. All things considered, I have concluded that ten per cent. of the first $5,000 and 5 % of the next $5,000 and three per cent. of the balance is as much as is reasonable here. Especially so as I am satisfied that very few of the bar of this State (where fees are not extremely high), would decline to do the work that was done here for these fees.

The chief item of labor in the services of counsel was the
26 title examination necessary to learn what real estate could be attached; but this was done only once, at the most, by each of the counsel. The allowances, therefore, should be computed on the aggregate of the claims represented by each firm or individual.

The order may direct that Messrs. Scott & Staples be paid ten per cent. of the first $5,000 and five per cent. of the balance, if any, of the aggregate of principal and inter- of the claims of Huff, Andrews & Moyler Company; Nelson & Myers; Smith & King; Castner, Curran & Bullitt, and Central Manufacturing Company.

That A. B. Coleman, Esq., be paid ten per cent. of the aggregate of principal and interest of the claims of Fairfax & Bell and Standard Oil Company.

That S. Hamilton Graves, Esq., be paid ten per cent. of the first $5,000 and five per cent. of the balance of principal and interest of the claim of First National Bank of Baltimore.

That Messrs. Watts, Robertson & Robertson be paid ten per cent. of the first $5,000, five per cent. of the next $5,000 and three per cent. of the balance of the claim of Virginia Iron, Coal & Coke Company.

That Messrs. Cocke & Glasgow be paid ten per cent. of the principal and interest of the claim of the West End Supply Company.

HENRY C. McDOWELL.

And now at this day, to wit: In the district court of the United States for the western district of Virginia, at Lynchburg, held on Thursday, the 14th day of January, 1904.

HENRY C. McDOWELL, Judge.

Decree of Court.

Entered January 14th, 1904.

United States District Court, Western District of Virginia, at Lynchburg.

In re C. R. Baird, Bankrupt,
and
In re Roanoke Furnace Company, Bankrupt.

These causes having been argued by counsel, upon consideration thereof it is adjudged, ordered and decreed as follows:

1st. That for reasons stated in a written opinion, the demurrer of the attaching creditors to the petition of Wm. H. Staake, trustee, be, and the same is hereby, overruled.

27 2nd. And the attaching creditors having by leave of court filed their answer to said petition, to which the said trustee replies generally, it is further adjudged, ordered and decreed:

That the rights acquired by the attachment proceedings in the hustings court of the city of Roanoke by the attaching creditors, to-wit: the Virginia Iron, Coal & Coke Company; Huff, Andrews and Moyler Company; Nelson & Myers; Smith & King; Castner, Curran & Bullitt; Fairfax & Bell; Central Manufacturing Company; Standard Oil Company; West End Supply Company, and the First National Bank of Baltimore, be preserved for the benefit of the estate of the said C. R. Baird, bankrupt, and that said petitioner, Wm. H. Staake, trustee of the said estate, be, and he is hereby, subrogated to said rights, and authorized and empowered to enforce the said attachment liens with like force and effect as the said attaching creditors might have done had not the bankruptcy proceedings intervened.

3rd. Without at this time deciding or considering any other question, it is further adjudged, ordered and decreed that Wm. H. Staake, trustee, and John N. M. Shimer, trustee, are directed to collect the funds heretofore deposited by them under the agreement, known as the agreement No. 1, and to pay over the same to the said Wm. H. Staake, trustee, to be by him held subject to the orders of this court.

4th. And upon the hearing of the petition of counsel for the attaching creditors, and the demurrer of Staake, trustee, thereto, it is ordered that the said demurrer be, and it is hereby, overruled, and the said trustee having answered said petition, upon consideration of the arguments of counsel and for reasons set forth in a written opinion, it is hereby ordered that the said trustee pay to Messrs. Scott & Staples ten per cent. of the first $5,000 and five per cent. of the balance, if any, of the aggregate of principal and interest of the claims of Huff, Andrews & Moyler Company; Nelson &

Myers; Smith & King; Castner, Curran & Bullitt and Central Manufacturing Company.

To A. B. Coleman, Esq., ten per cent. of the aggregate of principal and interest of the claims of Fairfax & Bell and Standard Oil Company.

To S. Hamilton Graves, Esq., ten per cent. of the first $5,000 and five per cent. of the balance of principal and interest of the claim of First National Bank of Baltimore.

To Messrs. Watts, Robertson & Robertson ten per cent. of
28 the first $5,000, five per cent. of the next $5,000 and three per cent. of the balance of the claim of the Virginia Iron, Coal & Coke Co.

That Messrs. Cocke & Glasgow be paid ten per cent. of the principal and interest of the claim of West End Supply Company.

5th. It is further ordered that the trustee will make no disbursements under this order until ten days from the entry hereof shall have elapsed.

MEMORANDUM.—Whereas some or all the parties may appeal from, or petition for revision of, some part or all of the foregoing decree, it is further ordered that in the event any party shall, within ten days from this date, appeal from, or petition for a revision of, any part of this decree, such part of such decree shall be superseded pending the adjudication by the appellate court.

HENRY C. McDOWELL, Judge.

Enter Jan'y 14, 1904.

Clerk's Certificate.

UNITED STATES OF AMERICA, Western District of Virginia, } To-wit:

I, William McCauley, clerk of the district court of the United States for the western district of Virginia, at Lynchburg, do certify that the foregoing are true copies of proceedings had and certain papers filed in the matters of C. R. Baird, trading as C. R. Baird & Co., bankrupt, and *and* Roanoke Furnace Company, bankrupt, pending in said court.

Witness my hand and the seal of said court, at Lynchburg, Va., this 18th day of February, A. D. 1904.

Seal of the Court.

WM. McCAULEY, Clerk.

Fees for transcript of record, $11.45.

29 Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit.

VIRGINIA IRON, COAL AND COKE COMPANY ET AL., Petitioners,
vs.
WILLIAM H. STAAKE, Trustee of C. R. Baird & Company, Bankrupt, *et al.*, Respondents.
} No. 531.

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia, Lynchburg.

Jan. 21, 1904, petition to superintend and revise is filed, and cause is docketed.

Same day, copy of petition, with notice to respondents to answer, demur or move to dismiss within fifteen days mailed to S. Griffin, attorney for respondents.

Feb. 8, 1904, demurrer to petition is filed.

Same day, answer to petition is filed.

Feb. 22, 1904, transcript of record is filed.

March 25, 1904, 20 copies of printed record are filed.

May 12, 1904 (May term, 1904), cause came on to be heard and is argued before Judges Goff, Morris and Purnell, and submitted.

Nov. 15, 1904, (November term, 1904), the court announced and filed its opinion, which is as follows, to-wit:

30 Opinion.

Filed Nov. 15, 1904.

United States Circuit Court of Appeals, Fourth Circuit.

RECEIVERS OF THE VIRGINIA IRON, COAL AND COKE CO. *et al.*, Petitioners,
vs.
WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupt, *et al.*, Respondents. } No. 531.

FIRST NATIONAL BANK OF BALTIMORE, Petitioner,
vs.
WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupt, *et al.*, Respondents. } No. 532.

WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupt, *et al.*, Petitioners,
vs.
J. ALLEN WATTS, WILLIAM GORDON ROBERTSON, and Edward W. Robertson, *et al.*, Respondents. } No. 533.

Petitions to Supersede and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia, at Lynchburg, in Bankruptcy.

31 WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupt,
vs.
WATTS, ROBERTSON & ROBERTSON, A. B. COLEMAN, S. H. Graves, Scott & Staples, and Cocke & Glasgow. } No. 538.

Cross-appeals from the District Court of the United States for the Western District of Virginia, at Lynchburg.

(Argued May 12 and 13, 1904; Decided Nov. 15, 1904.)

Before Goff, Circuit Judge, and Morris and Purnell, District Judges.

Wm. Gordon Robertson, S. Hamilton Graves and A. P. Staples for petitioners, and Arthur G. Dickson, Samuel & M. Griffin, John Dickey, and Samuel W. Cooper for respondents in 531 and 532; Samuel W. Cooper, Samuel & M. Griffin, and Arthur G. Dickson for Staake, trustee; and Wm. Gordon Robertson and A. P. Staples for respondents and appellees in Nos. 533 and 538.

Statement.

The facts in these proceedings have been agreed upon and are as follows:

Chester R. Baird, trading as C. R. Baird & Co., on December 7th, 1899, owned certain real estate in Virginia, known as the West End Furnace property, and as of said date he sold it to the Roanoke Furnace Company, subject to certain existing encumbrances, and executed a contract in writing and received from the Roanoke Furnace Company all the consideration to which he was entitled under the contract, to-wit, shares amounting to $500,000 of the capital stock of the said Roanoke Furnace Company.

Under the contract of sale the Roanoke Furnace Company took immediate possession in December, 1899, of the property so purchased, but no deed to the company executed by Baird until November 5th, 1900, when a proper deed was executed and promptly recorded. In the meantime, during the month of October, 1900, nine different attachments, amounting to over $40,000, against
32 Baird as a non-resident of Virginia were issued at the instance of certain of his creditors, and were levied upon the furnace property. Under the provisions of the laws of Virginia, no deed from Baird to the furnace company having been executed and recorded until after the attachments were levied, it is conceded that the attaching creditors acquired as against Baird and the furnace company a lien upon the property so levied upon.

(Code of Virginia, 1887, sections 2463, 2464, 2465, 2472.)

Within four months from the levying of the attachments, to-wit: on December 24th, 1900, an involuntary petition in bankruptcy was filed against Baird in the United States district court for the eastern district of Pennsylvania, and he was adjudged a bankrupt, and on January 2, 1901, the district court of the United States for the western district of Virginia assumed ancillary jurisdiction of so much of the bankruptcy proceedings as related to the property located in Virginia. On December 29, 1900, also within four months from the levying of the attachments, an involuntary petition in bankruptcy was filed against the Roanoke Furnace Company, and such proceedings were had that it was adjudicated a bankrupt. On March 26, 1901, William H. Staake was appointed trustee of the bankrupt estate of C. R. Baird, and on June 29, 1901, John N. M. Shimer was appointed trustee of the bankrupt estate of the Roanoke Furnace Company.

Under orders of court the property conveyed by Baird to the furnace company was sold and the rights and claims of all the parties were transferred to the fund derived therefrom and all these claims were submitted to the determination of the court below by express consent of all the parties.

Upon the issues made by the petitions and answers the court below ruled that the attachments against Baird, having been obtained through legal proceedings against him, when he was insolvent and within four months prior to the filing of the petition in bankruptcy against him, were null and void under section 67*f* of the bankruptcy act of 1898, so far as they would give a preference to the attaching creditors, but that the liens should be preserved for the benefit of the bankrupt's estate, and that they should pass to and be preserved by the trustee for the benefit of the estate, and directed that the trustee of the bankrupt estate be subrogated to the rights of the attaching creditors, and authorized and empowered to enforce said attachment liens with like force and effect as the said attaching creditors might have done, had not the bankruptcy proceedings interfered. The district court also ruled that the trustee
33 took these liens subject to the claim for compensation of the attorneys who procured the attachments and directed that out of the fund derived from the attachments the reasonable fees of the attorneys representing the attaching creditors should be paid. The grounds upon which the learned district judge based his rulings are ably stated in his opinion filed in the case. These two rulings are the subject of the present cross petitions for revision.

MORRIS, district judge, delivered the opinion of the court:

Section 67*f* provides:

"That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: Provided, that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a *bona fide* purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

It cannot be disputed that the liens of the attachments in this case were obtained within four months by legal proceedings against a person who was insolvent, and that the court has on due notice ordered that the right under the attachments shall be preserved for the benefit of the estate and pass to and be preserved by the trustee for the benefit of the estate. There is therefore in the facts of this case a literal gratification of the words of this section. It is con-

tended, however, that as the first clause of the section makes null and void the liens thereon mentioned and declares that the property affected by the lien shall be wholly discharged and released therefrom and pass to the trustee as part of the estate of the bankrupt, therefore the exception in the latter part of the clause of 67*f* can have reference only to liens on property, which, if the liens were annulled, would pass to the trustee of the bankrupt released from the lien.

34 We think this is narrowing the more obvious meaning of the words. The wording seems clearly to contemplate that a creditor might obtain by reason of his being a creditor of the bankrupt a prohibited lien against property, which would not if unaffected, pass to the trustee in bankruptcy, and it would appear that it was for that reason the clause in question was inserted preserving the lien if the court should so order for the benefit of the estate and vesting it in the trustee.

A primary object of the bankrupt law is to prevent preferences and compel equality among creditors of the bankrupt, and there can be no doubt that the sequestering of attachment liens, such as those in question in this case, for the benefit of the general creditors does produce equality and prevent preferences.

The rule that the trustee takes the estate of the bankrupt in the same plight as the bankrupt held it is not applicable to liens which, although valid as to the bankrupt, are invalid as to creditors. This distinction is clearly stated in the following citation from *In re* New York Economical Printing Company, 110 Fed. Rep., 514, quoted by the Supreme Court of the United States in Hewit *vs.* Berlin Machine Works, 194 U. S., 302, "The bankrupt act does not vest the trustee with any better right or title to the bankrupt's property than belongs to the bankrupt or to his creditors at the time when the trustee's title accrues. The present act, like all preceeding acts, contemplates that a lien good at that time as against the debtor and as against all his creditors shall remain undisturbed. If it is one which has been obtained in contravention of some provision of the act, which is fraudulent as to creditors, or invalid as to creditors for want of record, it is invalid as to the trustee."

In the present case the sale by the bankrupt was void as against attaching creditors for want of a recorded deed. The property was levied upon by creditors, and by virtue of the attachments might have been sold under judicial process against the bankrupt. The levy was within four months of the filing of the petition in bankruptcy and under section 67*f* the lien is preserved for the benefit of his estate. In the case of *In re* New York Economical Printing Co., above cited, Judge Wallace, speaking of the right of a trustee in bankruptcy to treat as invalid a chattel mortgage which was not filed in compliance with the laws of New York, and which, under the decisions in that State, could be treated as invalid only by creditors who had obtained judgments and acquired a lien, proceeded

further to say: "Subdivision *b*, sec. 67 (act of 1898), pre-
35 serves for the benefit of the estate in bankruptcy, a right which some particular creditor has been prevented from enforcing by the intervention of the debtor's bankruptcy. If a creditor by an execution, or a creditor's bill, has secured a legal or equitable lien upon mortgaged property before the mortgagor has been adjudicated a bankrupt, under this provision his rights will or will not inure to the benefit of the estate, depending upon the time when the lien was acquired. If acquired more than four months before the commencement of the bankru-tcy proceedings, his lien would inure to his own exclusive benefit; but if acquired at any time within four months it would be null and void under subdivision '*f*' of the section, except as preserved for the benefit of the estate as provided in that subdivision and in subdivision '*b*.'"

It is urged that by giving to the trustee of the bankrupt's estate the benefit of the attachments the court is taking from the attaching creditors property which did not belong to the bankrupt and could not have passed to his trustee, but which was a right which the law of Virginia, because of a policy of its own, gave to the creditors in a property which did not in fact belong to the bankrupt.

We think that the Virginia law may well be considered as giving the right to the attaching creditor because *quoad* the attaching creditor the law regards the property so attached as to that extent still remaining the property of the bankrupt because of the want of a proper recorded evidence of transfer, and that it is because the law considers the furnace property to that extent as remaining the property of Baird that the attachments are liens at all.

We consider the language of section 67*f* so mandatory and imperative that we arrive at the conclusion that the ruling of the court below must be sustained.

The other question is as to the allowance of a reasonable compensation to the attorneys who represented the attaching creditors and whose proceedings produced the fund which now is to pass to the trustee of the bankrupt.

The attaching creditors, in good faith and in a justifiable exercise of the right given to them by the Virginia law, employed counsel to institute proceedings to seize the property which the bankrupt, as it now appears, had sold. By virtue of that seizure and solely by virtue of it, and to the extent of the seizure, the proceeds of those proceedings now pass to the trustee.

The equity of the claim for compensation to be paid out of the fund is very strong.

It is clearly a case in which by an appropriation which the bank-
36 rupt law makes of a fund which came into existence and was preserved by the legal proceedings instituted by the attaching creditors all the common creditors without distinction are benefited. The fund which otherwise the attaching creditors would have secured for their own benefit the bankrupt law says shall be shared equally among all the creditors.

The fund was brought into existence by the exertions of the attaching creditors, and should be considered as in the same class as a fund arising under a creditors' bill, because the bankrupt act declares it shall be so treated. The fund comes into the hands of the trustee of the bankrupt burdened with the charges which were necessarily incurred to bring it into existence. It would appear eminently proper in such a case that the bankruptcy court should in its discretion allow such reasonable counsel fees and expenses as were necessarily incurred in the prosecution of the suits.

Trustees *vs.* Greenough, 105 U. S., 527–534.

The court below carefully considered the amounts proper to be allowed, and with all the facts before it fixed the allowances. We do not find that injustice has been done either to the counsel of the attaching creditors or to the estate of the bankrupt, and we approve the allowances as fair and just.

The orders of the court below are *affirmed.*

PURNELL, district judge, dissenting:

I cannot concur in the foregoing opinion. Upon the facts agreed and the law stated, it is evident to my mind that Congress did not mean by section 67*f* of the bankruptcy act of 1898, to provide for the maintenance or preservation of liens such as those set out in this case. If the attachments were void no lien was acquired thereunder, and if void for one purpose they were void for all purposes. They were not in favor of the bankrupt, but for debts due by him, and I cannot agree that even under the act of Congress a court of bankruptcy can convert a debt or liability into an asset. The trustee under the bankrupt law takes only such property as the bankrupt is entitled to. He was not only entitled to nothing under these attachments, but he was the debtor whose property was attached.

And as to the other question, to-wit: the allowance of reasonable compensation to attorneys who represented attaching creditors and whose proceedings produced the fund, if the fund is to be retained in the bankrupt court, I concur in the opinion that there should be allowance of reasonable compensation, but as to the other question I most respectfully dissent.

37 & 38 Nov. 18, 1904, (same term), the court made and entered the following judgment, to-wit:

Judgment.

Filed Nov. 18, 1904.

United States Circuit Court of Appeals, Fourth Circuit.

RECEIVERS OF VIRGINIA IRON, COAL AND COKE COMPANY *et al.*, Petitioners,
vs.
WILLIAM H. STAAKE, Trustee of C. R. Baird & Company, Bankrupts, *et al.*, Respondents. } No. 531.

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia, at Lynchburg.

This cause came on to be heard upon the petition, demurrer, answer and the transcript of the record of the proceedings of the district court of the matter for review, and was argued by counsel and submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court, in the matter brought up for review, be, and the same is hereby affirmed, costs will be paid by said trustee.

It is further ordered, that the clerk of this court transmit a copy of this judgment to the said district court forthwith.

NATHAN GOFF.

Nov. 18, 1904.

39 Petition for a Rehearing.

Presented Dec. 9, 1904.

In the United States Circuit Court of Appeals, Fourth Circuit.

Petition for Rehearing.

In re C. R. BAIRD, Trading as C. R. Baird & Co., Bankrupt. In Bankruptcy.
and
In re ROANOKE FURNACE COMPANY, Bankrupt. In Bankruptcy.

To the honorable judges of the United States circuit court of appeals for the fourth circuit:

Your petitioner, with all deference to the court, most respectfully asks that it be granted a rehearing upon the record herein, and upon the majority opinion rendered November 15th, 1904, and that the decree entered on November 15th, 1904, be annulled, and that in

lieu thereof, a decree be entered in conformity with the prayer of the original petition filed in this court.

In addition to the severe consequence to petitioner (the total loss of its debt; this is the necessary result, since the claims proven as shown by the original record exceed fourteen hundred thousand dollars, exclusive of interest, and petitioner is advised that the other property of the bankrupt, to-wit, that located in the
40 States of New York, Pennsylvania and New Jersey, has been sold for a comparatively small sum to a combination of the larger creditors), the effect of the majority opinion is so far-reaching, standing, as it does, without a precedent, and by the construction given to section 67–F, makes Congress exceed the power conferred upon it by the Constitution, and over-rides a rule of law settled and established by the United States Supreme Court, and upon the question of "what constitutes a preference," is in direct conflict with the opinion of the circuit court of appeals of the eighth circuit, your petitioner respectfully urges that it be reheard and assigns the following grounds:

1st. The opinion ignores the effect of the most pertinent facts of this case, to-wit: That C. R. Baird sold the furnace property on December 7th, 1899, by a contract valid as to him and his general creditors; and that he executed a deed to the Roanoke Furnace Company, dated November 5th, 1900, and which was recorded on the 7th day of November, 1900.

2nd. The construction placed upon section 67–F, is erroneous; and, if correct, makes the bankruptcy act exceed the constitutional limitations placed upon Congress, extends its operation beyond the limits fixed by the Supreme Court, and results in unreasonable consequences.

3rd. Upon the question of "what constitutes a preference," as that term is used in the bankruptcy act, the opinion is in direct conflict with the opinion of the circuit court of appeals of the eighth circuit.

As to the first ground: The court, fully appreciating the fact that under the terms of the bankruptcy act, and in conformity with the decisions thereunder, in order to sustain the contention of the trustee, it must first ascertain that the attached property was that of the bankrupt, as of the date the petition was filed against him, on page 6 of its opinion, says:

"We think that the Virginia law may well be considered as giving the right to the attaching creditor, because *quoad* the
41 attaching creditor, the law regards the property so attached as to that extent still remaining the property of the bankrupt, because of the want of proper recorded evidence of transfer, and that it is because the law considers the furnace property to that extent as remaining the property of Baird, that the attachments are liens at all."

This is unquestionably correct prior to, but not subsequent to, November 7th, 1900, since as of that date, every vestige of interest, legal or equitable, because of the record of a valid deed, passed from

Baird, and under the laws of Virginia, neither he, or any one claiming under him, or any creditor of his, either had or could acquire, any interest therein, or lien thereon, because of his previous ownership.

The proposition that, a lien upon property, to the extent of its amount, preserves an ownership in that property, in the debtor, as against his subsequent valid deed, for a full and fair consideration, is to us incomprehensible. Such a rule of law would, as was in effect said by the dissenting judge, "convert a liability into an asset." It would create a new and novel form of ownership, neither founded in reason, or sustained by authority. Suppose, for instance, that the Roanoke Furnace Company had on November 7th, 1900, the date it recorded its deed (which was nearly two months prior to the date the petition was filed against Baird), paid to petitioner the amount of its lien, dissolved the attachment, released the *lis pendens*, and dismissed the suit; could it have been successfully contended in any court, then, or at any subsequent time, by any person whatsoever, that petitioner had disposed of, and the Roanoke Furnace Company, in so doing, had purchased an asset or property belonging to Baird? Unquestionably not. The lien was petitioner's, and the property was that of the Roanoke Furnace Company, and had been for over a year prior to the filing of the petition against Baird.

We are, with all respect to the court, forced to the belief, that it, when considering this case, either lost sight of the contract of
32 purchase and sale dated December 7th, 1899, and of the deed of November 5th, 1900, or failed to appreciate the force and effect of these instruments under the laws of Virginia. Under the laws of this State, the ownership of the furnace property passed under the written contract from Baird on December 7th, 1899. The written contract was valid as to Baird, and as to his general creditors, and was void only as to his lien creditors, as was admitted by respondent counsel during the oral argument.

As to the second ground: The construction placed upon sec. 67–F, is erroneous; and if correct, makes the bankruptcy act exceed the limitations placed on Congress by the Constitution, and extends the operation of the act beyond the limits fixed by the Supreme Court, and results in most unreasonable consequences. It is submitted that in construing the various provisions of the bankruptcy act, it must be constantly borne in mind, that the act deals only with the estate of the bankrupt; that the prohibitions, restrictions and remedies therein provided for, have reference solely and exclusively to the bankrupt's property, and that rights become vested as of the date the petition is filed.

Aside from the cases cited in the brief, the attention of the court is called to Pierie *vs.* Chicago Title & Trust Company, 182 U. S., 449; 45 Law Ed., 1178, in which the court used this language:

"It is hardly necessary to assert that the object of a bankruptcy act, so far as its creditors are concerned, is to secure equality of distribution among them of *the property of the bankrupt*."

Mr. Justice Catron, in the case *Re* Klein, which is cited and approved in Hanover National Bank *vs.* Moyses, 186 U. S., 185; 46 Law Ed., 1118, in discussing the constitutional provision for a national bankrupt act, said:

"Of this subject (bankruptcy) Congress has general jurisdiction; and the true inquiry is: To what limits is that jurisdiction restricted? I hold it extends to all cases where the law causes
43 to be distributed *the property* of the debtor among his creditors. This is its least limit."

Mr. Chief Justice Waite, in the case *In re* Deckert, which case was cited and approved in Hanover National Bank *vs.* Moyses, *supra*, when discussing the constitutional requirement of uniformity of the bankrupt act, used this language:

"But it has thus far been sustained for the reason that it was made a rule of the law to subject to the payment of debts under its operations, only such property as could by judicial process be made available for the same purpose. * * * One of the effects of a bankrupt law is that of a general execution issued in favor of all the creditors of the bankrupt, reaching all his property subject to levy, and applying it to the payment of all his debts according to their respective priorities. *It is quite proper, therefore, to confine its operation to such property as other legal process could reach.*"

In the case of Hewitt *vs.* Berlin Machine Works (194 U. S., 302), cited by this court in its opinion, p. 5, the limitations of the act was clearly defined when the court used this language:

"The bankrupt act does not vest the trustee with any better right or title to the bankrupt's property than belongs to the bankrupt, or to his creditors at the time when the trustee's title accrues."

We take it, that in construing sec. 67–F, the court must be bound by the principles above established; that is, that the only lien which can be affected by that section, is a lien which is upon property which can pass to the trustee of the bankrupt; that is, confine its operation to such property as other process could reach as of the date the petition was filed. This court in its opinion, on page 5, says:

"The wording seems clearly to contemplate that a creditor
44 might obtain, by reason of his being a creditor of the bankrupt, a prohibited lien against property which would not, if unaffected, pass to the trustee in bankruptcy, and it would appear that it was for that reason the clause in question was inserted, preserving the lien, if the court should so order, for the benefit of the estate, and vesting it in the trustee."

By this construction, the act is made to deal with the property of a third party: it imposes a penalty upon a creditor of a bankrupt by reason of the fact that he is such creditor, and not by reason of any effect which his procuring of a lien upon the property of a third party, may have had upon the estate of the bankrupt. It brings into the estate, as an asset, the proceeds from a lien not upon that estate, and one which no process from any court—State or Federal—could have reached as of the date the petition was filed. Such con-

struction, in effect, and in fact, in the case at bar, creates an asset. Assume, for the purpose of illustration, that no sale has yet been made of the furnace property by the Federal court; that under the decree in this case, Staake, trustee, applied to the hustings court of Roanoke city, and was made plaintiff in petitioner's attachment suit there pending; that the Roanoke Furnace Company then appeared and filed its plea, setting up the covenants contained in the deed of November 5th, 1900, from Baird to it. The only replication to such a plea must be, that the trustee is not enforcing the lien because of any interest then, or ever had therein, by the bankrupt grantor, but because of a property right created in the trustee by sec. 67–F of the bankruptcy act. If the trustee was proceeding because of any right or interest which may have existed in the bankrupt, it must defeat the attachment lien, for no one can enforce a lien against his solemn covenant in an instrument under seal.

It is submitted that the proposition involved in the above quotation, to-wit, that there may be a prohibited lien against property which would not, if unaffected, pass to the trustee in bankruptcy, is a pioneer. After a most careful search, we have been unable to find any decision of any court, which held that the bankrupt act avoided a lien on any property whatsoever, other than that of the bankrupt which passed to his trustee. It is submitted that the real and true purpose of sec. 67–F, was to procure equality of distribution of a bankrupt's *assets* among his creditors without preference. An apt illustration of the beneficial effect of the provision quoted, is to be found in the case *In re.* Economical Printing Co., which is cited in the opinion, and reported in 110 Fed. Rep., p. 514. In that case, the printing company had mortgaged certain property. Because of the mortgagee's failure to comply with the registry laws of the State of New York, it was contended that the property passed to the trustee free and discharged from the mortgage. This proposition, however, was denied by the court. The mortgaged property, of course, passed to the trustee. A lien had been secured upon that property within the prohibited period of four months. The court held, and very properly held, that the trustee was entitled to the benefit of that lien. Now this presents a case where the lien was taken from the creditor; since the mortgage was held valid, *quoad* the trustee, it would appear that the same results would have been secured to the estate by simply avoiding the judgment lien, as was secured by subrogating the trustee.

We wish to illustrate to the court, a case which might arise, in which the right to preserve the lien would be of material benefit to the estate, and thereby demonstrate the true purpose of the provision in question.

Under the laws of Virginia, in a suit to set aside a fraudulent conveyance, priority is given, not to the first creditor who institutes his suit for that purpose, but to the first creditor who, after instituting his suit, files and causes to be recorded, a *lis pendens*. Now, to

illustrate: In June a creditor filed a bill to set aside as fraudulent a deed made by his debtor, but he does not record the *lis pendens* provided by statute. In September another creditor files his
46 bill for the same purpose, and does record his *lis pendens*. In November the deed is declared null and void, and in December the debtor is adjudged a bankrupt, and the property so fraudulently conveyed passes to his trustee. The word "creditor" in Virginia, means lien creditor, and hence it is not necessary, under the act, that the plaintiff filing his bill in June, should have filed a *lis pendens* as to the general creditors of his fraudulent debtor. Therefore, his lien being four months anterior to the adjudication of bankruptcy, is unaffected by the bankrupt laws, and is valid as against the general creditors of the debtor. The lien of the second petitioning creditor being within four months of the filing of the petition, is void under the bankrupt law. Now comes the beneficial effect of the preservative provision in clause "F": The first lien is valid under the bankrupt law, and is valid as against the general creditors of the debtor, but there being no *lis pendens* recorded, it is void as to the lien of the second creditor. The lien of the second creditor, having his *lis pendens*, is anterior under the State laws, to the lien of the first creditor, but is void under the four-months clause of the bankrupt law. Should the court preserve the lien of the second creditor, it preserves the priority of that lien, and thus preserves for the general creditors that much of the assets of the bankrupt which would have gone to the first creditor instituting the suit, and in the event the property was not more than sufficient to have satisfied his claim, would have taken the entire estate. Thus, a lien otherwise void, is preserved by the court for the benefit of the general creditors.

We call the attention of the court to the quotations on page 6 of the opinion filed, wherein this language is quoted:

"Sub-division *b*, sec. 67 (act of 1898) preserves for the benefit of the estate in bankruptcy, a right which some particular creditor has been prevented from enforcing by the intervention of the debtor's bankruptcy":

and that in the case at bar, the intervention of the debtor's
47 bankruptcy in no way affected the status of the Roanoke Furnace property, nor did it prevent any particular creditor from enforcing a right. The general creditors of Baird were prevented from acquiring any rights by the recordation of the deed of November 5th, 1900, nearly two months prior to the date the petition was filed against Baird. The court says, on page 5 of its opinion:

"The property which was levied upon by creditors, and by virtue of the attachments, might have been sold under judicial process against the bankrupt."

It is most respectfully submitted that while the bankrupt was a necessary party to the suit, yet the suit was not to sell property which belonged to the bankrupt, and consequently, it could hardly be said that it was sold under judicial process against him, within the mean-

ing of the bankruptcy act. As we construe it, this suit was no more a process against Baird, than it would have been had it been to foreclose an ordinary deed of trust in which he appeared as trustee. His interest in the furnace property was gone; it passed from him more than a year before, and the only defense which he could have made in the suit, had he entered an appearance, would have been to question the correctness of the debt.

Third Ground.—Upon the question of "what constitutes a preference," as that term is used in the bankruptcy act, the opinion of this court is in direct conflict with the opinion of the circuit court of appeals of the eighth circuit. This court in its opinion at page 5, says:

"A primary object of the bankrupt law is to prevent preferences, and compel equality among creditors of the bankrupt, and there can be no doubt that the sequestering of attachment liens, such as those in question in this case, for the benefit of the general creditors, does produce equality, and prevents preferences."

48 That the property attached in the case at bar was not estate of the bankrupt, which could pass to his trustee, is not questioned. The attachment, if enforced, will not be paid out of the estate of the bankrupt, or out of a fund produced by a sale of his estate. A preference, if petitioner's attachment was not sequestered, but was left to it, would not be created unless this court construed the word "preference," as used in the act, to mean equal percentage of payment to each creditor, regardless of the source from which the fund might be derived, with which such payment might be made. Such a construction of a preference is in direct conflict with the construction given by the circuit court of appeals of the eighth circuit, in the case of Swartz *vs.* Fourth National Bank, 117 Federal Rep., page 1. In that case, at page 7, the court said:

"The test of a preference, as we have seen, is whether or not a transfer or payment will have the effect to pay on one claim a larger dividend *out of the estate of the bankrupt than that estate will pay on other claims of the same class.* It is its effect upon the *equal distributio.. of the estate of the bankrupt*, not its effect upon the creditor, that determines the preference." * * *

"Those creditors who are entitled to receive out of the estate of the bankrupt the same percentage of their claims are in the same class, however much their owners may have the right to collect from others than the bankrupt. *Their relations to third parties, their right to collect of others*, the personal security they may have, their endorsements or guaranties, receive no consideration, no thought. *It is the relation of their claims to the estate of the bankrupt, the percentages their claims are entitled to draw out of the estate of the bankrupt*, and these alone, that dictate the relations of the creditors to the estate, and fix their classification and their preferences."

49 & 50 The payment of petitioner's attachment to it can work no diminution of the bankrupt's estate. The property upon which the attachments were levied were sold by Baird on December 7th, 1899,—more than a year prior to the filing of the peti-

tion in bankruptcy against him, and he received all the consideration to which he was entitled.

In the case *In re* New York Economical Printing Co., hereinbefore referred to, and cited by this court, it was held that the trustee stood in the shoes, so to speak, of the bankrupt, and that a mortgagee who had failed to comply with the registry laws of the State of New York, had a valid prior lien upon the mortgaged property *quoad* the trustee; then how can it be possibly questioned, under this authority, but that a purchaser for value, who for a time only, fails to comply with the registry laws of Virginia, has a right of property superior to the trustee? We submit that under this authority, the Roanoke Furnace property, even though no deed had ever been recorded, would not have passed to Baird's trustee. Then, certainly, with a deed admittedly valid and properly recorded, by no possibility could anything pass to the trustee.

Your petitioner most respectfully urges that it be given a rehearing, and that, thereupon, such decree may be entered as will give to your petitioner the sole benefit of its attachment lien.

Respectfully,

RECEIVERS OF VIRGINIA IRON, COAL AND COKE COMPANY AND OTHERS,
By WM. GORDON ROBERTSON,
A. P. STAPLES, Counsel.

I, Wm. Gordon Robertson, a practising attorney in the United States circuit court of appeals for the fourth circuit, do hereby certify that, in my opinion, a rehearing should be granted as asked for in the foregoing petition, and upon the grounds therein stated and that a decree should be entered giving to petitioner the benefit of its attachment lien.

Given under my hand this 5th day of December, A. D. 1904.

WM. GORDON ROBERTSON.

51 Dec. 9, 1904, mandate stayed pending petition for a rehearing.

Order Denying a Rehearing.

Filed Feb. 7, 1905.

United States Circuit Court of Appeals, Fourth Circuit.

RECEIVERS OF VIRGINIA IRON, COAL AND COKE CO. ET AL., Petitioners,
vs.
WILLIAM H. STAAKE, Trustee of C. R. Baird & Co., Bankrupts, *et al.*, Respondents. } No. 531.

On Petition for Review, &c., of the District Court of the United States for the Western District of Virginia.

This court having at its November term, 1904, rendered its decision affirming the judgment of the district court in this cause, and the petitioners, by *its* attorney, having on December 9, 1904, presented to the court a petition for a rehearing of the cause.

It is now here ordered, by this court, that the rehearing asked for, be, and the same is hereby denied.

NATHAN GOFF,
Circuit Judge Presiding.

Feb. 7th, 1905.

Feb. 21, 1905, (February term, 1905), mandate stayed 30 days to allow petitioners to file their application in the supreme court for a writ of certiorari.

52 Clerk's Certificate.

UNITED STATES OF AMERICA, Fourth Circuit, } *ss.:*

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said circuit court of appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals, fourth circuit, this 10th day of March, A. D., 1905.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

53 United States Circuit — of Appeals, Fourth Circuit.

UNITED STATES OF AMERICA, *ss:*

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do make return to the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 12th day of April 1905, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the transcript already filed in the clerk's office of the Supreme Court of the United States, with the petition for the writ of certiorari, be taken, as a return to said writ, dated the 14th day of April A. D. 1905.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals on this 17th day of April A. D. 1905.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals
for the Fourth Circuit.

C. M. D.

54 United States Circuit Court of Appeals for the Fourth Circuit.

RECEIVERS OF VIRGINIA IRON, COAL & COKE CO. ET ALS., Petitioners,
vs.
WM. H. STAAKE, Trustee of C. R. Baird, Trading as C. R. Baird & Co., Respondent.
No. 531.

It is hereby stipulated that the transcript already filed in the clerk's office of the Supreme Court of the United States, with the petition for the writ of certiorari, be taken as a return to said writ, dated the 14th day of April A. D. 1905.

S. HAMILTON GRAVES,
WM. GORDON ROBERTSON,
EDWARD W. ROBERTSON,
Of Counsel for Receivers of Virginia Iron, Coal & Coke Co. *et al.*

S. & M. GRIFFIN,
Of Counsel for W. H. Staake, Trustee.

UNITED STATES — AMERICA, *ss:*

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit do certify that the above stipulation of counsel is a true copy of the original filed April 17, 1905, and now remaining among the records and proceedings in the therein entitled cause.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals, at Richmond, on this 17th day of April, A. D. 1905.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

C. M. D.

55 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting:

Being informed that there is now pending before you a suit in which Receivers of Virginia Iron, Coal and Coke Company *et al.*, are petitioners, and William H. Staake, trustee of C. R. Baird, trading as C. R. Baird & Company, No. 531, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do
56 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of April, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

57 [Endorsed:] File No. 19,684. Supreme Court of the United States, October term, 1904. No. 584. Henry K. McHarg & A. A. Phlegar, receivers &c., *et al.*, *vs.* Wm. H. Staake, trustee, &c. Writ of certiorari. The execution of the within writ appears from certain schedules thereto annexed. Henry T. Meloney, cl'k U. S. C. C. appeals. April 17, 1905.

58 [Endorsed:] File No. 19,684. Supreme Court U. S., October term, 1904. Term No. 584. Henry K. McHarg & A. A. Phlegar receivers &c. *et al. vs.* Wm. H. Staake, trustee &c. Writ of certiorari and return. Filed April 18", 1905.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 213.

FIRST NATIONAL BANK OF BALTIMORE,
PETITIONER,

vs.

WM. H. STAAKE, TRUSTEE, &C., ET AL.,

AND

No. 214.

HENRY K. McHARG ET AL., RECEIVERS, &C., ET AL.,
PETITIONERS,

vs.

WM. H. STAAKE, TRUSTEE, &C.

CERTIFIED COPY OF EXHIBIT No. 2.

EXHIBIT No. 2.

An agreement, made this seventh day of December, 1899, by and between Chester R. Baird (hereinafter called the "vendor"), of the first part, and Roanoke Furnace Company, a corporation organized under the laws of the State of New Jersey, having its registered principal office with the New Jersey Corporation Guarantee and Trust Company, at No. 419 Market street, Camden, New Jersey (hereinafter called the "company"), of the second part.

Whereas, the vendor is the owner of the property and rights hereinafter described; and

Whereas, the company has been duly organized pursuant to the laws of the State of New Jersey, with an authorized capital stock of $500,000, divided into shares of the par value of $100 each; and

Whereas, the company desires by an issue of its capital stock as hereinafter provided, to purchase and acquire said property and rights; and

Whereas, the board of directors of the company have ascertained, adjudged and declared, that the said property and rights are of the fair value of five hundred thousand dollars ($500,000), and that the acquisition of said property and rights is necessary for the business of the company and to carry out its contemplated objects:

Now therefore, it is hereby agreed, by and between the vendor and the company as follows:

1. The vendor has sold, assigned, transferred and set over, and does hereby sell, assign, transfer and set over unto the company, its successors and assigns, all his right, title and interest in and to the following described property, to wit:

All of his interest in the furnace plant, formerly operated by the Roanoke Iron Company, at Roanoke, Va., subject to the payments still owing on the agreement with Robert E. Tod, which are hereby assumed by the company.

This property does not include the rolling-mill plant.

2. The company hereby agrees, in consideration of said sale and upon the delivery of said property to it, to issue to the vendor and his nominees as hereinafter provided, or to such other nominees as the vendor shall in writing hereafter direct, at such time and in such amounts as they shall respectively direct, certificates of stock of the company to the aggregate amount of five thousand shares, and said shares shall be deemed to be and are hereby declared to be full-paid shares and not liable to any further call, and the holders of such stock shall not be liable to any further payment thereon.

3. Said stock shall be issued in part as follows:

To—	Shares
Chester R. Baird	10
Nicholas H. Wagner	10
George F. Eldredge	10
James Collins Jones	10

4. The balance of said stock shall, unless otherwise directed in writing by the vendor, be issued as follows:

To—	Shares.
The vendor, Chester R. Baird	4959
George H. B. Martin	1

5. The delivery of the certificates for said shares to the above-named parties and their respective receipts for the same shall be a full discharge of each of the parties hereto to the extent thereof.

It is understood and agreed that the shares to be issued to the parties named in paragraph 3, hereof are the shares subscribed by the incorporators of the company, as set forth in the certificate of incorporation.

6. The vendor hereby covenants and agrees with the company, upon the request and at the cost of the company, to execute and to do all such further assurances and things as shall reasonably be required by the company for vesting in it the property and rights agreed to be hereby sold, and giving to it the full benefit of this agreement.

Witness, the hand and seal of the vendor and the corporate seal of the company, attested by the signatures of its officers thereunto duly authorized, the day and year first above written.

(S'g'd) CHESTER R. BAIRD. [SEAL.]
ROANOKE FURNACE COMPANY,
By C. R. BAIRD, *Pres't.*

Attest:
[CORPORATE SEAL.]
N. H. WAGNER, *Sec'y.*

In presence of—
JAMES COLLINS JONES.

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

I, Jacob Mann, a notary public in and for the State of Pennsylvania and county aforesaid, do certify that Chester R. Baird, individually, and Chester R. Baird, the president, and Nicholas H. Wagner, the secretary, of the Roanoke Furnace Company, whose names are signed to the foregoing writing, have each acknowledged the same before me in my county aforesaid.

Given under my hand and notarial seal this 15th day of October, 1900.

(S'g'd) JACOB MANN,
[NOTARY SEAL.] *Notary Public.*

This deed made the fifth day of November in the year nineteen hundred between Chester R. Baird of the city of Philadelphia and State of Pennsylvania of the first part and the Roanoke Furnace Company, a corporation duly incorporated under the laws of the State of New Jersey and duly registered in the State of Virginia of the second part—

Witnesseth, that in consideration of the issuing and delivering heretofore of certain shares of the capital stock to the amount of five hundred thousand dollars, of the said Roanoke Furnace Company in pursuance of a certain agreement between the parties hereto the receipt heretofore of the certificates for which shares is hereby formally acknowledged the said Chester R. Baird, hath granted, bargained, sold and conveyed and doth hereby grant, bargain, sell and convey unto the said Roanoke Furnace Company its successors and assigns forever with general warranty, all the following-described furnace property lying partly in the city of Roanoke and partly in the county of Roanoke, Virginia, and comprising about fifty-two and three-quarters (52¾) acres of land forty-four and seven-eighths (44⅞) acres in Roanoke City, and seven and seven-eighths acres in Roanoke county, to wit:

First. Beginning at a sycamore tree on the north bank of Roanoke river, designated as "1;" thence north twenty-eight and three-fourths (28¾) degrees west twenty (20) poles to a point in the road; thence along said road north thirty-seven and one-fourth (37¼) degrees west thirteen poles and north twelve and one-fourth (12¼) degrees west seventeen (17) poles to the line of the Norfolk and Western Railroad Company's lands at "2;" thence with the line of the said company's lands in a southwesterly direction one hundred and ninety and one-half (190½) poles to the line of Jacob Trout's lands at "3;" thence with said Trout's lands south seven and one-half (7½) degrees east five (5) poles to three white oaks at "4" on the north bank of Roanoke river; thence down the river as it meanders, following the usual water mark one hundred and ninety and one-half (190½) poles to the place of beginning containing forty-four and seven-eighths (44⅞) acres and being the same land conveyed to the Roanoke Iron Company by C. G. Nininger and others, by deed dated the seventh (7th) day of November, A. D. 1889, and recorded in Deed Book 3, page 117, in the office of the clerk of the county court of Roanoke county, Virginia.

Second. Beginning at a sycamore tree on the bank of Roanoke river at "1" corner to the lands of Asberry & Taylor; thence with the same south twenty-two (22) degrees west, five and three-tenths (5.3) poles to a locust on the bank of the mill-race at "2;" thence up the north bank of said race as it meanders one hundred and thirty-five and nine-tenths (135.9) poles to a double locust on the east side of an outlet of the said race at "3;" thence fifty-nine (59) degrees west two (2) poles to the bank of the river at "4;" thence down the bank of the river at common high-water mark, as it meanders passing by a sycamore at ninety poles at mouth of boat sluice in all one hundred and fifty-three (153) poles to the beginning, containing seven (7) acres three (3) roods and thirty (30) poles and being the same land conveyed to

the said Roanoke Iron Company by E. W. Sykes and Ella J. Sykes by deed dated the fourth day of February, A. D. 1891, and recorded in Deed Book 7, page 70, in the office of the clerk of the county court of Roanoke county, Virginia.

Together with the furnace, all structures, buildings, cars, machinery and fixtures, tools and implements, whatsoever, formerly owned by the said Roanoke Iron Company, thereon erected, therein contained or used in connection therewith.

Being the same property conveyed to Robert E. Tod, by David W. Flickwir and H. Peyton Gray, special commissioner under deed dated the sixth day of October, 1897, recorded in Deed Book 109, page 68 of the hustings court clerk's office of the city of Roanoke, Virginia and in Deed Book 17, page 280, in the clerk's office of Roanoke county court, Virginia.

Excepting therefrom the rolling-mill plant.

And the said Chester R. Baird covenants that the grantee shall have quiet possession of the said land free from all encumbrances, and that he, the said Chester R. Baird will execute such further assurances of the said lands as may be requisite. It is expressly understood and agreed however, that this conveyance has been made subject to the payment by the said Roanoke Furnace Company of the balance of purchase-money due or to become due to Robert E. Tod, on the land of which the hereby granted premises are a part the payment of which balance of purchase-money has been assumed by the said Roanoke Furnace Company.

Witness the following signature and seal.

CHESTER R. BAIRD. [SEAL.]

Witnesses:

JACOB MANN.

THOS. W. ANDREW.

($500 U. S. internal-revenue stamp, canceled.)

STATE OF PENNSYLVANIA, *County of Philadelphia, to wit:*

I, Jacob Mann, notary public for the county aforesaid, for the State of Pennsylvania, do hereby certify that Chester R. Baird, whose name is signed to the writing above, bearing date on the 5th day of November, 1900, has acknowledged the same before me in my county aforesaid.

Given under my hand this the 5th day of November, 1900.

(S'g'd) JACOB MANN,
[NOTARY SEAL.] *Notary Public.*

Acknowledgment notary.

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

I, M. Russell Thayer, a prothonotary of the county of Philadelphia and clerk of the courts of common pleas of the county of Philadelphia, which are courts of record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify that Jacob Mann, Esq., whose name is subscribed to the certificate of acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a notary public for the Commonwealth of Pennsylvania, residing in the county aforesaid, duly commissioned and qualified to administer oaths and affirmations and take acknowledgments and proofs of deeds or conveyances for lands, tenements, hereditaments, to be recorded in said State of Pennsylvania, and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature and elsewhere, and that I am well acquainted with the handwriting of the said notary public and verily believe the signature thereon is genuine; and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In testimony whereof I have hereto set my hand and affixed my seal of said court this 5th day of November, in the year of our Lord one thousand nine hundred.

(Sgn.) M. RUSSELL THAYER,
[NOTARY PUBLIC.] *Prothonotary.*

In the clerk's office of the hustings court for the city of Roanoke, Virginia, the 7th day of November, 1900, this deed was presented and, with the certificates annexed, admitted to record at 11.45 o'clock a. m., with $500 I. R. canceled.

Teste:

(Sng.) S. S. BROOKE, *Clerk.*

In the clerk's office of the county court for the county of Roanoke the 8th day of November, 1900, this deed was presented and, with the certificates annexed, admitted to record, having affixed thereto, duly canceled, United States internal-revenue stamps of the value of $500.

Teste:

(Sgn.) THOS. I. PRESTON, *Clerk.*
D.

Endorsed: "In D. B. 125, page 149, clerk's office, hustings court, city of Roanoke."

"Recorded in Deed Book No. 22, page 402, and examined. Roanoke Co."

UNITED STATES OF AMERICA,
Western District of Virginia, ss:

In the United States Circuit Court, Clerk's Office, at Lynchburg, Va., March 10, 1906.

The above is a true copy of Exhibit No. 2 filed with the petition of Wm. H. Staake, trustee of the estate of Chester R. Baird, trading as C. R. Baird & Company, bankrupt, and in the matter of Roanoke Furnace Company.

Witness my hand and seal of said court the day and date above mentioned.

[SEAL.] WM. MCCAULEY, *Clerk.*